

20 F.R. 2175

NATIONAL LABOR RELATIONS BOARD

**Revocation of Assignment of Responsibilities to the Associate General
Counsels of the Division of Operations and Division of Law,
Respectively**

Pursuant to the provisions of section 3(a) of the Administrative Procedures Act (Pub. Law 404, 79th Cong., 2d Sess.), the National Labor Relations Board hereby separately states and currently publishes in the FEDERAL REGISTER notification that:

Assignment of Responsibilities to the Associate General Counsels of the Division of Operations and Division of Law, Respectively, effective December 21, 1954 (19 F.R. 8830, December 23, 1954) was revoked effective at close of business March 31, 1955.

Dated: Washington, D.C., April 1, 1955.

By direction of the Board.

FRANK M. KLEILER,
Executive Secretary

**Authority and Assigned Responsibilities of General Counsel of
National Labor Relations Board**

Pursuant to the provisions of section 3(a) of the Administrative Procedures Act (Pub. Law 404, 79th Cong., 2d Sess.), the National Labor Relations Board hereby separately states and currently publishes in the FEDERAL REGISTER the following board memorandum describing the authority and assigned responsibilities of the general counsel of the National Labor Relations Board (effective April 1, 1955).

Dated: Washington, D.C., April 1, 1955.

By direction of the Board.

FRANK M. KLEILER,
Executive Secretary

**Board Memorandum Describing the Authority and Assigned
Responsibilities of the General Counsel of the National Labor Relations
Board (Effective April 1, 1955)**

The statutory authority and responsibility of the General Counsel of the Board are defined in section 3(d) of the National Labor Relations Act as follows: "There shall be a General Counsel of the Board who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel of the Board shall exercise general supervision over all attorneys employed by the Board (other

than trial examiners and legal assistants to Board members) and over the officers and employees in the regional offices. He shall have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under section 10, and in respect of the prosecution of such complaints before the Board, and shall have such other duties as the Board may prescribe or as may be provided by law.”

This memorandum is intended to describe the statutory authority and to set forth the prescribed duties and authority of the General Counsel of the Board, effective April 1, 1955:

I. Case handling—A. Complaint cases. The General Counsel of the Board has full and final authority and responsibility, on behalf of the Board, to accept and investigate charges filed, to enter into and approve informal settlement of charges, to dismiss charges, to determine matters concerning consolidation and severance of cases before complaint issues, to issue complaints and notices of hearing, to appear before Trial Examiners in hearings on complaints and prosecute as provided in the Board’s rules and regulations, and to initiate and prosecute injunction proceedings as provided for in section 10(l) of the act. After issuance of Intermediate Report by the Trial Examiner, the General Counsel may file exceptions and briefs and appear before the Board in oral argument, subject to the Board’s rules and regulations.

B. Court litigation. The General Counsel of the Board is authorized and has responsibility, on behalf of the Board, to seek and effect compliance with the Board’s orders and make such compliance reports to the Board as it may from time to time require.

On behalf of the Board, the General Counsel of the Board will, in full accordance with the directions of the Board, petition for enforcement and resist petitions for review of Board Orders as provided in section 10(e) and (f) of the act, initiate and prosecute injunction proceedings as provided in section 10(j), seek temporary restraining orders as provided in section 10(e) and (f), and take appeals either by writ of error or on petition for certiorari to the Supreme Court: *Provided, however,* That the General Counsel will initiate and conduct injunction proceedings under section 10(j) or under section 10(e) and (f) of the act and contempt proceedings pertaining to the enforcement of or compliance with any order of the Board only upon approval of the Board, and will initiate and conduct appeals to the Supreme Court by writ of error or on petition for certiorari when authorized by the Board.

C. Representation and other election cases. The General Counsel of the Board is authorized and has responsibility, on behalf of the Board, to receive and process, in accordance with the decisions of the Board and with such instructions and rules and regulations as may be issued by the Board from time to time, all petitions filed pursuant

to section 9 of the National Labor Relations Act as amended. He is also authorized and has responsibility to conduct secret ballots pursuant to section 209(b) of the Labor Management Relations Act of 1947, whenever the Board is required to do so by law; and to enter into consent election agreements in accordance with section 9(c)(4) of the act.

The authority and responsibility of the General Counsel of the Board in representation cases shall extend, in accordance with the rules and regulations of the Board, to all phases of the investigation through the conclusion of the hearing provided for in section 9(c) and section 9(e) (if a hearing should be necessary to resolve disputed issues), but all matters involving decisional action after such hearing are reserved by the Board to itself.

In the event a direction of election should issue by the Board, the authority and responsibility of the General Counsel, as herein prescribed, shall attach to the conduct of the ordered election, the initial determination of the validity of challenges and objections to the conduct of the election and other similar matters; except that if appeals shall be taken from the General Counsel's action on the validity of challenges and objections, such appeals will be directed to and decided by the Board in accordance with such procedural requirements as it shall prescribe. If challenged ballots would not affect the election results and if no objections are filed within five days after the conduct of a Board-directed election under the provisions of section 9(c) of the act, the General Counsel is authorized and has responsibility, on behalf of the Board, to certify to the parties the results of the election in accordance with regulations prescribed by the Board.

Appeals from the refusal of the General Counsel of the Board to issue a notice of hearing on any petition, or from the dismissal by the General Counsel of any petition, will be directed to and decided by the Board, in accordance with such procedural requirements as it may prescribe.

In processing election petitions filed pursuant to section 9(e) of the act, the General Counsel of the Board is authorized and has responsibility, on behalf of the Board, to conduct an appropriate investigation as to the authenticity of the 30 percent showing referred to and, upon making his determination to proceed, to conduct a secret ballot. If there are no challenges or objections which require a hearing by the Board, he shall certify the results thereof as provided for in such section, with appropriate copies lodged in the Washington files of the Board.

D. Jurisdictional dispute cases. The General Counsel of the Board is authorized and has responsibility, on behalf of the Board, to perform all functions necessary to the accomplishment of the provisions of section 10(k) of the act, but in connection therewith the Board will, at the request of the General Counsel, assign to him for the purpose of conducting the hearing provided for therein, one of its staff Trial Examiners. This authority and responsibility and the assignment of the Trial Examiner to the General Counsel shall terminate with the close of the hearing. Thereafter the Board will assume

full jurisdiction over the matter for the purpose of deciding the issues in such hearing on the record made and subsequent hearings or related proceedings and will also rule upon any appeals.

II. *Internal regulations.* Procedural and operational regulations for the conduct of the internal business of the Board within the area that is under the supervision and direction of the General Counsel of the Board may be prepared and promulgated by the General Counsel.

III. *State agreements.* When authorized by the Board, the General Counsel may initiate and conduct discussions and negotiations, on behalf of the Board, with appropriate authorities of any of the States or Territories looking to the consummation of agreements affecting any of the States or Territories as contemplated in section 10(a) of the act: Provided, however, That in no event shall the Board be committed in any respect with regard to such discussions or negotiations or the entry into of any such agreement unless and until the Board and the General Counsel have joined with the appropriate authorities of the State or Territory affected in the execution of such agreement.

IV. *Liaison with other governmental agencies.* The General Counsel of the Board is authorized and has responsibility, on behalf of the Board, to maintain appropriate and adequate liaison and arrangements with the office of the Secretary of Labor, with reference to the reports required to be filed pursuant to section 9(f) and (g) of the act and availability to the Board and the General Counsel of the contents thereof.

The General Counsel of the Board is authorized and has responsibility, on behalf of the Board, to maintain appropriate and adequate liaison with the Federal Mediation and Conciliation Service and any other appropriate Governmental Agency with respect to functions which may be performed in connection with the provisions of section 209(b) of the act. Any action taken pursuant to the authority and responsibility prescribed in this paragraph shall be promptly reported to the Board.

V. *Anti-communist affidavits.* The General Counsel of the Board is authorized and has responsibility, on behalf of the Board, to receive the affidavits required under section 9(h) of the act, to maintain an appropriate and adequate file thereof, and to make available to the public, on such terms as he may prescribe, appropriate information concerning such affidavits, but not to make such files open to unsupervised inspection.

VI. *Miscellaneous litigation involving board and/or officials.* The General Counsel of the Board is authorized and has responsibility, on behalf of the Board, to appear in any court to represent the Board or any of its Members or agents, unless directed otherwise by the Board.

VII. *Personnel.* In order better to ensure the effective exercise of the duties and responsibility described above, the General Counsel of the Board, subject to applicable laws and the rules and regulations of the Civil Service Commission, is authorized and has responsibility, on behalf of the Board, to select, appoint, retain, transfer, promote,

NATIONAL LABOR RELATIONS BOARD

demote, discipline, discharge, and take any other necessary and appropriate personnel action with regard to, all personnel engaged in the field offices and in the Washington office (other than Trial Examiners, Legal Assistants to Board Members, the personnel in the Information Division, the personnel in the Division of Administration, the Solicitor of the Board and personnel in his office, the Executive Secretary of the Board and personnel in his office, including the Docket, Order and Issuance Section, and secretarial, stenographic and clerical employees assigned exclusively to the work of trial examiners and the Board Members); provided, however, that no appointment, transfer, demotion or discharge of any Regional Director or Officer in Charge shall become effective except upon the approval of the Board.

In connection with and in order to effectuate the exercise of the powers herein delegated (but not with respect to those powers herein reserved to the Board), the General Counsel is authorized, using the services of the Division of Administration, to execute such necessary requests, certifications, and other related documents, on behalf of the Board, as may be needed from time to time to meet the requirements of the Civil Service Commission, the Bureau of the Budget, or any other governmental agency. The Board will at all times provide such of the "housekeeping" functions performed by the Division of Administration as are requested by the General Counsel for the conduct of his administrative business, so as to meet the stated requirements of the General Counsel within his statutory and prescribed functions.

The establishment, transfer or elimination of any Regional or Sub-Regional Office shall require the approval of the Board.

NATIONAL LABOR RELATIONS BOARD

VIII. To the extent that the above-described duties, powers and authority rest by statute with the Board, the foregoing statement constitutes a prescription and assignment of such duties, powers and authority, whether or not so specified.

GUY FARMER,
Chairman.
ABE MURDOCK,
Member.
IVAR H. PETERSON,
Member.
PHILIP RAY RODGERS,
Member.

NATIONAL LABOR RELATIONS BOARD

April 1, 1955.

23 F.R. 6966

NATIONAL LABOR RELATIONS BOARD

GENERAL COUNSEL

Amendment to Board Memorandum Describing Authority and Assigned Responsibilities

Pursuant to the provisions of section 3(a) of the Administrative Procedures Act (Pub. Law 404, 79th Cong., 2d Sess.), the National Labor Relations Board hereby separately states and currently publishes in the FEDERAL REGISTER the following amendment to board memorandum describing the authority and assigned responsibilities of the General Counsel of the National Labor Relations Board (effective August 25, 1958). This amends memorandum which appeared at 20 F.R. 2175.

6967

Dated, Washington, D.C., September 8, 1958.

By direction of the Board.

[SEAL]

FRANK M. KLEILER,
Executive Secretary.

The Board Memorandum Describing the Authority and Assigned Responsibilities of the General Counsel of the National Labor Relations Board effective April 1, 1955, is hereby amended by striking the text of Section VII and substituting the following:

In order better to ensure the effective exercise of the duties and responsibilities described above, the General Counsel of the Board, subject to applicable laws and the Rules and Regulations of Civil Service Commission, is delegated full and final authority on behalf of the Board over the selection, retention, transfer, promotion, demotion, discipline, discharge and in all other respects, of all personnel engaged in the field and in the Washington Office (other than personnel in the Board Members' offices, the Division of Trial Examiners, the Division of Information, the Security Office, the Office of the Solicitor, and the Office of the Executive Secretary); provided, however, that no appointment, transfer, demotion or discharge of any Regional Director, or of any Officer in Charge of a Sub-Regional Office shall become effective except upon approval of the Board.

The General Counsel will provide such administrative services and housekeeping services as may be requested by the Board in connection with the conduct of its necessary business, and will submit to the Board a quarterly report on the performance of these administrative functions.

In connection with and in order to effectuate the foregoing, the General Counsel is authorized to execute such necessary requests, certifications, and other related documents

NATIONAL LABOR RELATIONS BOARD

on behalf of the Board, as may be needed from time to time to meet the requirements of Civil Service Commission, the Bureau of the Budget, or any other Governmental Agency; provided, however, that the total amount of any annual budget requests submitted by the agency, the apportionment and allocation of funds and/or the establishment of personnel ceilings within the agency shall be determined jointly by the Board and the General Counsel.

The establishment, transfer or elimination of any Regional or Sub-Regional Office shall require the approval of the Board.

24 F.R. 6666

NATIONAL LABOR RELATIONS BOARD

GENERAL COUNSEL

Amendment to Board Memorandum Describing Authority and Assigned Responsibilities

Pursuant to the provisions of section 3(a) of the Administrative Procedure Act (Pub. Law 404, 79th Cong., 2d Sess.), the National Labor Relations Board hereby separately states and currently publishes in the FEDERAL REGISTER the following further amendment to Board Memorandum Describing the Authority and Assigned Responsibilities of the General Counsel of the National Labor Relations Board (effective August 3, 1959). This amends memorandum which appeared at 20 F.R. 2175, as amended at 23 F.R. 6966.

Dated, Washington, D.C., August 12, 1959.

By direction of the Board.

FRANK M. KLEILER,
Executive Secretary

The Board Memorandum Describing the Authority and Assigned Responsibilities of the General Counsel of the National Labor Relations Board effective April 1, 1955, as amended August 25, 1958, is hereby further amended by striking the text of Section VII and substituting the following:

1. In order more fully to release the Board to the expeditious performance of its primary

6667

function and responsibility of deciding cases, the full authority and responsibility for all administrative functions of the Agency shall be vested in the General Counsel. This authority shall be exercised subject to the limitations contained in paragraph 2 with respect to the personnel of, or directly related to, Board Members, and shall be exercised in conformity with the requirements for joint determination as described in paragraph 4.

2. The General Counsel shall exercise full and final authority on behalf of the Agency over the selection, retention, transfer, promotion, demotion, discipline, discharge and in all other respects, of all personnel engaged in the field and in the Washington Office (other than personnel in the Board Members' offices, the Division of Trial Examiners, the Division of Information, the Security Office, the Office of the Solicitor, and the Office of the Executive Secretary); provided, however, that the establishment, transfer or elimination of any Regional or Sub-Regional Office shall require the approval of the Board.

NATIONAL LABOR RELATIONS BOARD

3. The General Counsel will provide such administrative services and housekeeping services as may be requested by the Board in connection with the conduct of its necessary business, and will submit to the Board a quarterly report on the performance of these administrative functions.

4. In connection with and in order to effectuate the foregoing, the General Counsel is authorized to formulate and execute such necessary requests, certifications, and other related documents on behalf of the Agency, as may be needed from time to time to meet the requirements of Civil Service Commission, the Bureau of the Budget, or any other Governmental Agency; provided, however, that the total amount of any annual budget requests submitted the Agency, the apportionment and allocation of funds and/or the establishment of personnel ceilings within the Agency shall be determined jointly by the Board and the General Counsel.

26 F.R. 3911

NATIONAL LABOR RELATIONS BOARD

REGIONAL DIRECTORS

Delegation of Authority

Pursuant to the provisions of section 3(a) of the Administrative Procedure Act (Pub. Law 404, 79th Cong., 2d Sess.), the National Labor Relations Board hereby separately states and currently publishes in the FEDERAL REGISTER the following Delegation of Authority to the Regional Directors of the National Labor Relations Board:

Pursuant to section 3(b) of the National Labor Relations Act, as amended, and subject to the amendments to the Board's Statements of Procedure, Series 8, and to its Rules and Regulations, Series 8, effective May 15, 1961, and subject to such further amendments and instructions as may be issued by the Board from time to time, the Board delegates to its Regional Directors "its powers under section 9 to determine the unit appropriate for the purpose of collective bargaining, to investigate and provide for hearings, and determine whether a question of representation exists, and to direct an election or take a secret ballot under subsection (c) or (e) of section 9 and certify the results thereof."

Such delegation shall be effective with respect to any petition filed under subsection (c) or (e) of section 9 of the Act on May 15, 1961.

Dated, Washington, D.C., April 28, 1961.

By direction of the Board.

[SEAL]

OGDEN W. FIELDS,
Executive Secretary.

GENERAL COUNSEL

**Further Amendment to Memorandum Describing Authority and
Assigned Responsibilities**

Pursuant to the provisions of section 3(a) of the Administrative Procedure Act (Pub. Law 404, 79th Cong., 2d Sess.), the National Labor Relations Board hereby separately states and currently publishes in the FEDERAL REGISTER the following further amendment

NATIONAL LABOR RELATIONS BOARD

to Board memorandum describing the authority and assigned responsibilities of the General Counsel of the National Labor Relations Board (effective on May 15, 1961).¹

Dated, Washington, D.C., April 28, 1961.

By direction of the Board.

[SEAL]

OGDEN W. FIELDS,
Executive Secretary

The Board memorandum describing the authority and assigned responsibilities of the General Counsel of the National Labor Relations Board effective April 1, 1955, as amended September 3, 1958 (effective August 25, 1958), and August 12, 1959 (effective August 3, 1959), is hereby further amended as follows:

1. Strike the text of section I C. entitled “Representation and other Election Cases” and substitute the following:

Pursuant to section 3(b) of the Act, and subject to such instructions and rules and regulations as may be issued by the Board from time to time, the Board has delegated to its Regional Directors its powers under section 9 to determine the unit appropriate for the purpose of collective bargaining, to investigate and provide for hearings, and determine whether a question of representation exists, and to direct an election or take a secret ballot under subsection (c) or (e) of section 9 and certify the results thereof. Such delegation shall be effective with respect to any petition filed under subsection (c) or (e) of section 9 of the Act on May 15, 1961.

Subject to the foregoing delegation and to the Regional Director’s direct responsibility to perform the delegated functions in accord with the Board’s rules and regulations and any other implementing directives of the Board, the General Counsel of the Board is authorized and has responsibility, on behalf of the Board, to facilitate the receipt and processing, in accordance with such instructions and rules and regulations as may be issued by the Board from time to time, all petitions filed pursuant to section 9 of the Labor Management Relations Act, as amended. The General Counsel is also authorized and has responsibility to conduct secret ballots pursuant to section 209(b) of the Labor Management Relations Act of 1947, whenever the Board is required to do so by law.

2. Strike paragraph 2, section VII of the amendment dated August 12, 1959 (effective August 3, 1959), and substitute the following:

The General Counsel shall exercise full and final authority on behalf of the Agency over the selection, retention, transfer, promotion, demotion, discipline, discharge, and in all other respects, of all personnel engaged in the field, except that personnel action with respect to Regional Directors and Officers-in-Charge of Subregional offices will be

¹ This amends memorandum which appeared at 20 F.R. 2175, as amended at 23 F.R. 6966 and 24 F.R. 6666.

conducted as hereinafter provided, and in the Washington Office (other than personnel in the Board

3912

Members' Offices, the Division of Trial Examiners, the Division of Information, the Security Office, the Office of the Solicitor, and the Office of the Executive Secretary): *Provided, however,* That the establishment, transfer or elimination of any Regional or Subregional Office shall require the approval of the Board.

The appointment, transfer, demotion, or discharge of any Regional Director or of any Officer-in-Charge of a Subregional office shall be made by the General Counsel only upon the approval of the Board.

67 FR 62992

Further Amendment to Memorandum Describing Authority and Assigned Responsibilities

Pursuant to the provisions of section 3(a) of the Administrative Procedure Act (Pub. Law 404, 79th Cong., 2d Sess.), the National Labor Relations Board hereby separately states and currently publishes in the Federal Register the following further amendment to Board memorandum describing the authority and assigned responsibilities of the General Counsel of the National Labor Relations Board (effective October 1, 2002).

Dated, Washington, DC, October 4, 2002.

By direction of the Board.

John J. Toner,
Executive Secretary

The Board memorandum describing the authority and assigned responsibilities of the General Counsel of the National Labor Relations Board effective April 1, 1955, as amended September 8, 1958 (effective August 25, 1958), and April 8, 1961 (effective May 15, 1961) (appearing at 20 FR 2175, 23 FR 6966, 24 FR 6666 and 26 FR 3911, respectively), is hereby further amended as follows:

1. Strike the text of paragraphs 1 and 4 of section VII of the amendment dated August 12, 1959 (effective August 3, 1959), strike the text of paragraph 2 of section VII of the amendment dated April 28, 1961 (effective May 15, 1961), and substitute the following:

62993

1. In order more fully to release the Board to the expeditious performance of its primary function and responsibility of deciding cases, the authority and responsibility for all administrative functions of the Agency shall be vested in the General Counsel, except as provided below. This authority shall be exercised subject to the limitations contained in paragraphs 2, 5, and 6, and shall be exercised in conformity with the requirements for joint determination as described in paragraph 4.

2. Subject to the limitations contained in paragraphs 5 and 6, the General Counsel shall exercise full and final authority on behalf of the Agency over the selection, retention, transfer, promotion, demotion, discipline, discharge, and in all other respects, of all personnel engaged in the field, except that personnel action with respect to Regional Directors and Officers-in-Charge of Subregional Offices will be conducted as hereinafter provided, and in the Washington Office (other than personnel in the Board Members' Offices, the Division of Judges, the Division of Information, the Security Office, the Office of the Solicitor, the Office of the Executive Secretary and the Office of the Inspector General): provided, however, that the establishment, transfer or elimination of any Regional or Subregional Office shall require the approval of the Board.

The appointment, transfer, demotion, or discharge of any Regional Director or of any Officer-in-Charge shall be made by the General Counsel only upon the approval of the Board.

4. In connection with and in order to effectuate the foregoing, the General Counsel is authorized to formulate and execute such necessary requests, certifications, and other related documents on behalf of the Agency, as may be needed from time to time to meet the requirements of the Office of Personnel management, the Office of Management and Budget or any other Governmental Agency; provided, however, that the total amount of any annual budget requests submitted by the Agency, the apportionment

and establishment of personnel ceilings within the Agency shall be determined jointly by the Board and the General Counsel.

2. Add the following paragraphs 5 and 6 to the text of section VII of the amendment dated April 28, 1961 (effective May 15, 1961):

5. The Information Technology Branch shall be realigned under the authority of the Chief Information Officer ("CIO") (who will jointly report to the General Counsel and the Chairman of the Board with respect to those matters covered by the responsibilities of the CIO), and placed with the Office of the Inspector General, Office of Equal Employment Opportunity and the Office of Employee Development outside the Division of Administration. The Editorial and Publications Services Section of the Library and Administrative Services Branch, Division of Administration, shall be transferred to the Office of the Executive Secretary.

6. The Chairman of the Board shall have full and final authority over the selection, retention, transfer, promotion, demotion, discipline, discharge and evaluation of those persons holding Senior Executive Service positions in the Division of Administration, the senior management official in the Office of Employee Development, the Chief Information Officer, and the Inspector General.

77 FR 43127

Further Amendment to Memorandum Describing Authority and Assigned Responsibilities of the General Counsel

Pursuant to the provisions of section 3(a) of the Administrative Procedure Act (Pub. L. 404, 79th Cong., 2d Sess.), the National Labor Relations Board hereby separately states and currently publishes in the Federal Register the following further amendment to Board memorandum describing the authority and assigned responsibilities of the General Counsel of the National Labor Relations Board.

The Board Memorandum describing the authority and assigned responsibilities of the General Counsel of the National Labor Relations Board effective April 1, 1955, as amended September 8, 1958 (effective August 25, 1958), and April 8, 1961 (effective May 15, 1961). And October 4, 2002 (effective October 1, 2002) (appearing at 20 FR 2175, 23 FR 6966, 24 FR 6666, 26 FR 3911, and 67 FR 62992, respectively), is hereby further amended as follows:

1. Strike the text of paragraph 6 of section VII of the amendment dated October 4, 2002 (effective October 1, 2002), and substitute the following:

6. The Agency shall appoint a Chief Financial Officer (“CFO”), who will jointly report to the General Counsel and the Chairman of the Board. The Budget, Finance and Acquisitions Management Branches shall be realigned under the authority of the CFO, and placed with the Office of the Chief Information Officer, Office of the Inspector General, Office of Equal Employment Opportunity and Office of Employee Development outside the Division of Administration.

2. Add the following paragraph 7 to the text of section VII of the amendment dated October 4, 2002 (effective October 1, 2002):

7. The Chairman of the Board shall have full and final authority over the selection, retention, transfer, promotion, demotion, discipline, discharge and evaluation of those persons holding Senior Executive Service positions in the Division of Administration, the senior management officials in the Office of Equal Employment Opportunity and the Office of Employee Development, the Chief Information Officer and the Chief Financial Officer.

Authority: Sections 3, 4, 6, and 10 of the National Labor Relations Act, 29 USC Sec. 3, 4, 6, and 10.

Dated Washington, DC, July 17, 2012

By direction of the Board

Lester A. Heltzer,
Executive Secretary

Further Amendment to Memorandum Describing Authority and Assigned Responsibilities of the General Counsel

Pursuant to the provisions of section 3(a) of the Administrative Procedure Act (Pub. Law 404, 79th Cong., 2d Sess.), the National Labor Relations Board hereby separately states and currently publishes in the Federal Register the following further amendment to Board memorandum describing the authority and assigned responsibilities of the General Counsel of the National Labor Relations Board.

The Board memorandum describing the authority and assigned responsibilities of the General Counsel of the National Labor Relations Board effective April 1, 1955, as amended September 8, 1958 (effective August 25, 1958), August 12, 1959 (effective August 3, 1959), April 28, 1961 (effective May 15, 1961), October 4, 2002 (effective October 1, 2002), and July 23, 2012 (effective July 23, 2012) (appearing at 20 FR 2175, 23 FR 6966, 24 FR 6666, 26 FR 3911, 67 FR 62992 and 77 FR 43127, respectively), is hereby further amended as follows:

1. Strike the text of paragraphs 1 and 2 of section VII of the amendment dated October 4, 2002 (effective October 1, 2002), and substitute the following:

1. In order more fully to release the Board to the expeditious performance of its primary function and responsibility of deciding cases, the authority and responsibility for all administrative functions of the Agency shall be vested in the General Counsel, except as provided below. This authority shall be exercised subject to the limitations contained in paragraphs 2, 5 and 7, and shall be exercised in conformity with the requirements for joint determination as described in paragraph 4.

2. Subject to the limitations contained in paragraphs 5 and 7, the General Counsel shall exercise full and final authority on behalf of the Agency over the selection, retention, transfer, promotion, demotion, discipline, discharge, and in all other respects, of all personnel engaged in the field, except that personnel action with respect to Regional Directors and Officers-in Charge of Subregional offices will be conducted as hereinafter provided, and in the Washington Office (other than personnel in the Board Members' Offices, the Division of Judges, the Division of Information, the Security Office, the Office of the Solicitor, the Office of the Executive Secretary and the Office of Inspector General): provided, however, that the establishment, transfer or elimination of any Regional or Subregional Office shall require the approval of the Board. The appointment, transfer, demotion, or discharge of any Regional Director or of any Officer-in-Charge of a Subregional office shall be made by the General Counsel only upon the approval of the Board.

Dated, Washington, DC, July 27, 2012.

By direction of the Board.

Lester A. Heltzer
Executive Secretary.

Richmond
HUMPHREY

OFFICE OF THE GENERAL COUNSEL

February 2, 1972

TO: George Squillacote, Director, Region 30

FROM: Peter G. Nash, General Counsel

SUBJECT: Authorization Pursuant to Section 102.118
of Board's Rules and Regulations to Permit
Compliance Officers to Testify in Backpay
Proceedings

Section 102.118 of the Board's Rules and Regulations, inter alia, prohibits Board agents from testifying in Board proceedings without the written consent of the General Counsel. In the past, Regional Directors have requested, and I have routinely granted, permission for Compliance Officers to testify in backpay proceedings with respect to backpay formulae and computations alleged in backpay specifications. Because these requests are routinely approved and because of my desire not to burden the Regions with unnecessary paperwork, I have decided to issue a blanket authorization to permit Compliance Officers to testify in support of backpay specifications in backpay proceedings. This authorization is effective immediately.

The authorization herein is conditioned upon a determination by the Regional Director that the testimony of the Compliance Officer is necessary in a backpay proceeding. However, in cases where the matters with respect to which the Compliance Officer would be called upon to testify present novel or unusual issues, or where there is any doubt concerning the scope of this authorization, clearance should be obtained from your Assistant General Counsel. In addition, where the Compliance Officer is requested by parties other than counsel for the General Counsel to produce statements, memorandums, or other documents contained in the Regional Office file, specific authorization to produce such materials must be obtained from the General Counsel.

This authorization is limited to the Compliance Officer, or Board agents performing the functions of a Compliance Officer. Any questions with respect to this memorandum should be discussed with your Assistant General Counsel.

/s/ Peter G. Nash
Peter G. Nash

OFFICE OF THE GENERAL COUNSEL

MEMORANDUM 74-17

March 21, 1974

TO: All Regional Directors, Officers-in-Charge,
and Resident Officers

FROM: Peter G. Nash, General Counsel

SUBJECT: Requests of U. S. Government Agencies to
Inspect and/or Copy Material in NLRB
Investigative Files

In response to requests for guidelines with respect to procedures to be followed by Regional Offices in circumstances where a Federal agency makes a request to inspect and/or copy materials in NLRB investigative files, this memorandum sets forth the appropriate procedures to be followed when such a request is made by a Federal agency. As you know, this matter was the subject of workshop discussion at our San Antonio Conference and a proposed draft of these guidelines was distributed to you for your consideration at that time.

My policy is to provide full cooperation and assistance to U. S. Government agencies where an appropriate request has been made. Accordingly, if an employee of a Federal agency requests permission to inspect an NLRB investigative file, such permission should be granted provided: (1) a written request has been made to the Regional Director by the head of the requesting employee's immediate organizational unit; and (2) the inspection is done at the Regional Office. With respect to the first requirement, the request must identify the employee who will inspect the file. In addition, the request should ordinarily identify the specific case file or files to be inspected. However, there may be circumstances where the request is, of necessity, a general one, e.g., all cases involving a particular labor organization or employer. Such a general request should nonetheless be honored provided, of course, that the employee of the requesting agency performs the work of going through the card catalog and identifying the files which he wishes to inspect. In addition, there may be emergency circumstances in which there is insufficient time for the requesting agency's organizational head to make a written request. In such cases, a telephonic request by a proper official of the requesting organization to the Regional Director will suffice. The Regions should maintain records concerning all such requests, whether oral or written, indicating the case name and number, the date of inspection, and the name of the inspecting person and his or her organization.

If an employee of a Federal agency desires a copy of material in the investigative file, a written request must be made by the head of the employee's immediate organizational unit to the NLRB General Counsel.

A copy of such request should be sent to the Regional Director of the Regional Office involved. Any such requests must describe with particularity the material to be copied, the relevance of such material to the requesting agency, and the precise manner in which the agency intends to use such materials. After consideration of the request, the General Counsel will inform the requesting agency as to whether permission to copy has been granted and, if so, whether there are any limitations as to the uses to which such copies may be put. Simultaneously, the General Counsel will advise the Regional Director of his decision and instruct him accordingly. As with requests to inspect, there may be emergency situations in which there is insufficient time for the requesting agency's organizational head to make a written request for a copy of material. There also may be occasions when a Federal Judge or grand jury requesting the material will refuse to comply with the requirements of seeking permission from the General Counsel. All such situations should be brought to the immediate attention of your Assistant General Counsel, including the necessary relevant information concerning the request. You will be advised promptly as to how to proceed in each such situation.

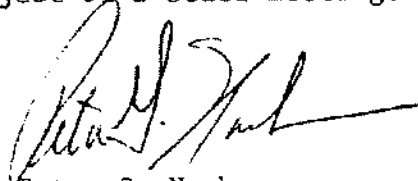
If the Federal agency is merely requesting a copy of a document in the public, or formal, file, it is not necessary that written request be made to the General Counsel. In such circumstances, the Regional Director can provide the documents and certify their authenticity if requested to do so. Of course, the request for the documents should be in writing.

In circumstances where materials are to be copied, such copying must be done at the Regional Office by an employee of the NLRB. Similarly, as with requests to inspect files, records should be maintained whenever a copy of material in the case file is furnished to another Federal agency. In addition to the information which should be recorded whenever files are inspected, the record should identify the specific material which has been copied. When a request is made for the original of the material and permission is granted by the General Counsel, the Region should make a copy of the document in question before it is delivered to the other agency. In addition, the return of the original should be required as soon as it has served the purpose of the requesting organization.

The foregoing instructions should cover most situations. There may be, however, unusual circumstances where the Regional Director believes that inspection of the file or compliance with a request for a copy of file materials would be an impediment to a current investigation or have an adverse effect on case handling. In such circumstances, where inspection is requested, the Regional Director should set forth his reasons for not recommending that inspection be permitted in a memorandum to Associate General Counsel DeSio and should not permit inspection unless authorized to do so by Mr. DeSio. If copying is requested, the Regional Director should also set forth his views concerning that aspect of the request.

In view of the above-stated policy to provide in appropriate circumstances other Federal agencies with materials, including affidavits from our investigative files, Board agents when interviewing witnesses should advise such witnesses of the possibility that their statements may be shown to another Federal agency upon a valid request for information. It should further be stressed to the witnesses, however, that such requests from other agencies are infrequent. The witnesses also should be told that their affidavits will remain confidential unless the witnesses are called to testify at a hearing and an appropriate request for such affidavit for the purposes of cross-examination is made upon the conclusion of direct testimony.

This memorandum should be made the subject of a staff meeting.



Peter G. Nash

Distribution:

Washington - Special
Regional - Special

MEMORANDUM 74-17

OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 92-2

March 20, 1992

TO : All Regional Directors, Officers-in-Charge,
and Resident Officers

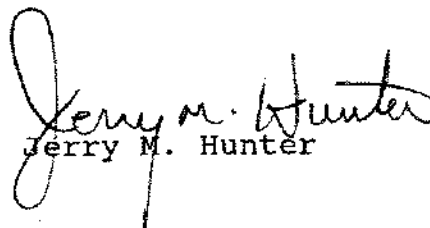
FROM : Jerry M. Hunter, General Counsel

SUBJECT: Authorization to file Vaughn Indices Under Section
102.118 of the Board's Rules and Regulations, as
amended

Section 102.118 of the Board's Rules and Regulations, as amended, inter alia, prohibits Board agents supervised by the General Counsel from giving testimony before the Board or any court with respect to any information coming to his or her knowledge in his or her official capacity or with respect to the contents of any files or records of the General Counsel, without the written consent of the General Counsel.

In connection with certain litigation under the Freedom of Information Act (FOIA), it is often required that the Agency file an inventory with the court, listing and describing the contents of a file which were not disclosed upon request. This inventory or index, originally required in Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), usually is accomplished with an affidavit. In addition, this index is often accompanied by other affidavits describing circumstances of creation or the use of the disputed documents in the Agency's processes. Although attorneys in the Special Litigation Branch in Washington routinely file such affidavits, field personnel can also be called upon to provide Vaughn indices. Written requests for authorization under Section 102.118 to provide affidavit testimony in the form of a Vaughn index are routinely granted.

Because requests to supply Vaughn indices routinely are granted and in order to lessen our paperwork burden, I have decided to issue a blanket authorization to field professionals and to Washington personnel working under my supervision to provide Vaughn indices in FOIA litigation to which the Board is a party. This authorization is conditioned upon a determination by the Assistant General Counsel for Special Litigation, that a Vaughn index and/or supporting affidavit is necessary and should be filed in the particular law suit. Where a field agent of the Board or employee of the Office of the General Counsel in Washington is requested by any party other than the General Counsel to provide a statement or to give testimony in FOIA litigation, specific authorization must be obtained from the General Counsel.


Jerry M. Hunter

cc: NLRBU

MEMORANDUM GC 92-2

OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 94-14

November 2, 1994

TO : All Regional Directors, Officers-in-Charge
and Resident Officers

FROM : Fred Feinstein, General Counsel

SUBJECT: Section 102.118 Delegation

Section 102.118 of the Board's Rules and Regulations, as amended, requires that any party seeking to procure the contents of files under the General Counsel's control in Washington or in the Regional Offices, or the testimony of any Board agent or attorney there employed, must secure the authorization of the General Counsel. As a "housekeeping" regulation, Section 102.118 does not itself establish a privilege on which the Agency can rely to avoid or prevent the disclosure of file documents or agent testimony. Rather, it merely provides an orderly procedure for Agency heads to consider requests or demands for evidence within their control and either to provide the evidence or to assert a recognized privilege for withholding it.¹

Over the years, Section 102.118 requests have been submitted to the General Counsel by members of the public, members of the Bar, officials of other governmental entities and Regional Directors seeking Board documents and Board agent testimony in NLRB and other administrative and court proceedings. Requests from private individuals and law enforcement personnel have also sought compliance with subpoenas issued by Federal and state courts.

Because they were routinely granted when made, two classes of requests have been addressed in blanket General Counsel authorizations. Former General Counsel Peter G. Nash, by memorandum dated February 2, 1972, authorized all compliance officers and other Board agents serving in a compliance officer role to testify in backpay proceedings with regard to the compliance specification preparation. In Memorandum GC 92-2, dated March 20, 1992, former General Counsel Jerry Hunter authorized all Regional Directors to prepare Vaughn indexes in response to appropriate requests under the Freedom of Information Act.

¹ N.L.R.B. v. Capitol Fish Co., 294 F.2d 868 (5th Cir. 1961); Singer Sewing Mach. Co. v. NLRB, 329 F.2d 200 (4th Cir. 1964); see also, Exxon Shipping Co. v. U.S. Department of Interior, ___ F.3d ___, (9th Cir. August 29, 1994).

Because other classes of requests under Section 102.118 frequently have been granted and in order to speed consideration of requests and eliminate paperwork and layers of review, I have decided to delegate to Regional Directors the authority to consider and decide whether or not to approve requests for authorization under Section 102.118 in the following additional circumstances, in the name of the General Counsel:²

1. when a party to a representation case alleges that Board agent conduct has interfered with the conduct of an election and Board agent testimony regarding the issues is necessary to develop a complete record,
2. when Board agent testimony is necessary to authenticate the signature of a deceased or unavailable witness for whom the agent prepared an affidavit, or to establish that the General Counsel made a good faith effort to locate the unavailable witness,
3. when Board agent testimony is necessary to establish that a respondent has failed to perform an affirmative act pursuant to a court enforced Board Order, or
4. when a request for access to Regional Office files unaccompanied by a subpoena is made by an official of a federal, state or local government agency in connection with law enforcement activities.³

² Letters to Section 102.118 requesters should contain a complimentary close from the General Counsel, by the Regional Director.

³ Our current policy with respect to granting an official of a federal agency access to our files and the authority to photocopy documents contained therein is set forth in Memorandum 74-17, "Requests of U.S. Government Agencies to Inspect and/or Copy Material in NLRB Investigative Files," dated March 21, 1974 (copy attached). Officials of state and local government agencies should be accorded similar cooperation. Regional Directors should remind the government officials to whom we accord such cooperation that our non-public file information was gathered for law enforcement purposes. The officials should be requested to assert any available privileges and resist disclosure if a request for disclosure of the information is made. In this regard a federal agency would have the FOIA exemptions available to resist inappropriate disclosure. Many states also have statutes similar to FOIA providing access to their files while exempting disclosure of certain documents. In addition, the official should be informed that it is expected that before disclosing the information supplied from our files to any source, the Regional Director will be informed.

In circumstances other than those set forth above, Section 102.118 requests from outside parties or counsel for nonpublic file documents or Board agent testimony, unaccompanied by a subpoena, normally should be denied by the Regional Director in the name of the General Counsel.⁴

⁴ It is the policy of the Office of the General Counsel to preserve the confidentiality of statements and materials contained in our investigatory files obtained in the course of an administrative investigation of unfair labor practice charges and representation cases and to produce such materials in Board proceedings only to the extent required by Section 102.118(b)(1), which provides that statements of witnesses called by the General Counsel are to be made available after the witness has testified. In this regard, it has consistently been held that the Act does not compel the Board to provide for discovery in its proceedings, and further, that the unavailability of discovery is not a prejudicial denial of due process. See, e.g., N.L.R.B. v. Robbins Tire and Rubber Company, 437 U.S. 214 (1978); McClain Industries, Inc. v. N.L.R.B., 521 F.2d 596 (6th Cir. 1974); Wellman Industries, Inc. v. N.L.R.B., 490 F.2d 427 (4th Cir. 1974); N.L.R.B. v. Automotive Textile Products Company, Inc., 422 F.2d 1255 (6th Cir. 1970); North American Rockwell Corporation v. N.L.R.B., 389 F.2d 866 (10th Cir. 1968); N.L.R.B. v. Movie Star, Inc., 361 F.2d 346 (5th Cir. 1966); Raser Tanning v. N.L.R.B., 276 F.2d 80 (6th Cir. 1960), cert. denied 363 U.S. 830.

Also, the Office of the General Counsel has no obligation to disclose exculpatory evidence contained in the investigatory file, if any there be. Erie County Plastic Corporation, 207 NLRB 564, 570, enf'd 505 F.2d 730 (3rd Cir. 1974). In addition, internal recommendatory or predecisional memoranda are protected from disclosure based on the historic privilege against disclosure of intra-agency memoranda and communications. N.L.R.B. v. Sears, Roebuck & Co., 421 U.S. 132, 149-152 (1975); Davis v. Braswell Motor Freight Lines, Inc., 363 F.2d 600, 603 (5th Cir. 1966). Lastly, such materials are privileged from disclosure as attorney work product. Hickman v. Taylor, 329 U.S. 495 (1947).

Moreover, it is the policy of the Office of the General Counsel, absent a showing of most unusual circumstances, not to permit Board agents to testify or to provide information concerning or investigative documents relating to the processing of unfair labor practice or representation cases. The reason for this policy is that the highly sensitive and delicate role of a Board agent in processing such cases would be seriously impaired if a real likelihood existed that he or she would become a material witness in the litigation of such cases or if investigative information, which is otherwise confidential and not subject to disclosure,

Where special circumstances are present, or the Regional Director believes authorization is warranted, the request should be submitted to the Division of Operations-Management together with the Regional Director's comments, and the General Counsel will respond.⁵

As under current practice, Regional Directors should insist that Section 102.118 requests from an outside party be in a writing that sets forth with particularity the testimony or document sought, the nature of the proceeding for which the testimony or document is sought, and the purpose for which it is sought. When requests for authorization in the foregoing circumstances are received in the Regional Office, the Director should respond in writing on behalf of the General Counsel. When such requests are received by the General Counsel in Washington, they will be referred to the appropriate Regional Director for response.

When a Regional Director, sua sponte, believes Board agent testimony is required in the circumstances described in categories 1 through 4 above, his or her authorization must be memorialized for the file. Copies of 102.118 responses written by Regional Directors to outside parties or counsel on behalf of the General Counsel and file memoranda memorializing Regional Director decisions to authorize Board agent testimony should be submitted to the Division of Operations-Management.

Requests for authorization under Section 102.118 in situations other than those described above will continue to be addressed by the General Counsel.

Subpoenas:

Whenever a Board agent or office receives a subpoena other than a Board subpoena demanding production of file documents and/or Board agent testimony concerning any Agency business, the Region should follow the procedures of

would become public. The Board has recognized the merits of this policy in Frank Invaldi, et al., A California Limited Partnership d/b/a Sunol Valley Golf and Recreation Co., 305 NLRB No. 52 (1991) and G. W. Galloway Company, 281 NLRB 262, fn. 1 (1985). The limited evidentiary privilege for the informal deliberations of all prosecutorial agencies and branches of government also has been recognized in the courts as applying to internal Board documents and agent testimony. J.H. Rutter Rex Manufacturing Co. v. N.L.R.B., 473 F.2d 223 (5th Cir. 1973); Stephens Produce Co., Inc. v. N.L.R.B., 515 F.2d 1373 (8th Cir. 1975).

Requests for the testimony of a Regional Director normally will be considered and addressed by the Regional Director under this delegation.

Casehandling Manual Section 11822 and should immediately contact the Special Litigation Branch at (202) 273-2930.

Any questions concerning this matter should be addressed to your Assistant General Counsel.


F. F.

Attachment

cc: NLRBU

OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 98-7

May 22, 1998

TO: All Regional Directors, Officers-in-Charge, Resident Officers,
Division and Office Heads, and Branch Chiefs

FROM: Fred Feinstein, Acting General Counsel

SUBJECT: Delegation of Section 102.118 Authorization

Section 102.118 of the Board's Rules and Regulations, as amended, requires that any party seeking to obtain the contents of files under the General Counsel's control in Washington or in the Regional Offices, or the testimony of any Board agent or attorney there employed, must secure the authorization of the General Counsel. Over the years, certain Section 102.118 requests have been routinely granted when made. In order to speed consideration of these requests and eliminate layers of review, several classes of Section 102.118 requests have been granted blanket General Counsel authorizations or the General Counsel has delegated the authority to the Regional Directors to decide whether to approve certain requests (see, February 2, 1972; March 21, 1974; March 20, 1992; and November 2, 1994 General Counsel Memoranda). These blanket authorizations and delegations of authority have proven beneficial to the efficiency of the agency.

The Special Litigation, Contempt, and Appellate Court Branches regularly engage in litigation in courts where affidavits from, and testimony by, Board agents or Attorneys, or production of agency records is necessary and/or beneficial. In other instances the agency finds it beneficial to share information with other government agencies, U.S. Trustees in bankruptcy, trustees in bankruptcy, or other creditors of a debtor. On other occasions the agency is responding to a third party subpoena. Currently, in these cases, written authorization by the General Counsel is required, on a case-by-case basis, to enable the submission of affidavits, testimony or production of documents to a court or others. Generally, these requests have been routinely granted.¹

¹ For example, the General Counsel granted the following recent requests: (a) December 14, 1994 Special Litigation request for authorization to permit Board agents to provide the Department of Justice with necessary evidence to defend against criminal trespass and state bar grievance charges; (b) November 14, 1994 Special Litigation request for authorization to disclose charging party's affidavits; (c) June 19, 1995 Special Litigation request for authorization to disclose an investigatory document that would settle a FOIA case; (d) April 21, 1998 Special Litigation request for authorization to supply affidavits and testify to support Board's exclusive jurisdiction on backpay claims; and (e) April 23, 1998 Special Litigation request for authorization to supply affidavits and possible testimony of resident officer in opposition to plaintiff's motion for

In litigation involving the enforcement branches, time is frequently of the essence in meeting court-imposed deadlines. Further, the litigating branches tend to be in the best position to evaluate the need, in each case, for §102.118 authorization and to weigh the advantages and disadvantages of disclosure against the costs of litigation concomitant with nondisclosure. Delegation of §102.118 authorization to the Associate General Counsel for Enforcement Litigation will further promote internal agency efficiency, allow the litigating branches to react more quickly to short deadlines, and incorporate one of the many proposals for streamlining the agency.

Accordingly, I hereby delegate to the Associate General Counsel for Enforcement Litigation the final authority to grant authorization under Section 102.118 of the Board's Rules and Regulations for any member of the staff of the General Counsel, whether in headquarters or in the field, to write affidavits, to testify, or to provide other evidence in ongoing litigation, or otherwise to disclose information where the matter is being handled by or with the assistance of one of the litigating branches of the Division of Enforcement Litigation and where:

1. Affidavits from, and testimony by, Board agents or attorneys, or production of agency records would be necessary and/or beneficial;
2. The agency finds it beneficial to share information with other government agencies, U.S. Trustees in bankruptcy, trustees in bankruptcy, or other creditors of a debtor; or
3. The agency is responding to a third party subpoena.²

F. F.

cc: NLRBU

preliminary injunction and in support of the Board's motion to dismiss or for summary judgment; (f) September 22, 1992 Contempt Litigation request for authorization to call a supervisory compliance officer and a field examiner as witnesses in a contempt case; and (g) Appellate Court requests on various occasions for authorization to submit affidavits from regional personnel regarding circumstances which would require sequestration of assets under §10(e).

² Pursuant to GC Memo 94-14, subpoenas (other than NLRB subpoenas) served upon Regional offices should be brought to the attention of the Special Litigation Branch.

OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 98-9 July 13, 1998

To: All Regional Directors, Officers-in-Charge, Resident Officers,
Division and Office Heads, and Branch Chiefs

From: Fred Feinstein, Acting General Counsel

Subject: Delegation of Section 102.118 Authorization

Any party seeking to obtain the contents of files under the General Counsel's control in Washington or in the Regional Offices, or the testimony of any Board agent or attorney there employed, is required, under Section 102.118 of the Board's Rules and Regulations, as amended, to secure the authorization of the General Counsel. Since certain types of requests under Section 102.118 have been routinely granted, those particular classes of Section 102.118 requests have received blanket General Counsel authorizations in order to speed consideration of such requests and to eliminate layers of review. The General Counsel has also delegated the authority to the Regional Directors to decide whether to approve certain other types of requests. (See, General Counsel Memoranda dated February 2, 1972, March 21, 1974, March 20, 1992 and November 2, 1994, attached.)

More recently, in General Counsel's Memorandum 98-7, dated May 22, 1998, I delegated authority to the Associate General Counsel for Enforcement Litigation under Section 102.118 of the Board's Rules and Regulations to decide whether to grant requests for any member of the staff of the General Counsel, whether in headquarters or in the field, to testify, or to provide other evidence or information in ongoing litigation in the courts, and to decide whether to otherwise disclose information in connection with matters handled by one of the litigating branches of the Division of Enforcement Litigation. Such authority is also to be exercised by the Associate General Counsel for Enforcement Litigation in other instances in which it would be beneficial to share information with other government agencies, U.S. Trustees in bankruptcy, trustees in bankruptcy, or other creditors of a debtor or on occasions when the agency is responding to a third party subpoena.

Over the course of the years in which the above blanket authorizations and other instances of delegation of authority under Section 102.118 have been exercised, such procedural changes have proven beneficial to the efficiency of the Agency. Accordingly, and in order to further facilitate casehandling, I am hereby delegating to the Associate General Counsel for Operations-Management the authority to decide on the appropriateness of granting any remaining

requests under Section 102.118 which do not specifically fall within any of the above areas of previously delegated authority. Generally, the Associate General Counsel for the Division of Operations-Management, who maintains close communication with the Regional Offices and with those headquarters Divisions under the supervision of the General Counsel, will be able to quickly evaluate the need, in each case, for Section 102.118 authorization and to determine whether disclosure or litigation over nondisclosure is to the best advantage to the Agency. This delegation of Section 102.118 authorization to the Associate General Counsel for Operations-Management will increase the Agency's efficiency and effectiveness in responding to such requests, and serve to assist in efforts to streamline procedures within the Agency. Accordingly, submissions of such requests not falling under the previously delegated authority and which seek Board Agent/Agency employee testimony or the production of documents and other similar information are henceforth to be directed to the Associate General Counsel for Operations-Management. The Associate General Counsel for Operations-Management will make determinations regarding such requests, on a case-by-case basis, on behalf of the General Counsel.

F. F.

Attachments

cc: NLRBU

OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 18-01

October 19, 2017

TO: All Regional Directors, Officers-in-Charge, Resident Officers,
Division and Office Heads, and Branch Chiefs

FROM: Richard F. Griffin, Jr., General Counsel /s/

SUBJECT: Delegation of Section 102.118 Authorization to the Division of Legal
Counsel

Section 102.118 of the Board's Rules and Regulations, as amended, requires that any party seeking to obtain the contents of files under the General Counsel's control in Washington or in the Regional Offices, or the testimony of any Board agent or attorney there employed, must secure the authorization of the General Counsel. In order to speed consideration of these requests and eliminate layers of review, several classes of Section 102.118 requests have been granted blanket General Counsel authorizations, or the General Counsel has delegated the authority to the Regional Directors or the Associate General Counsel for Enforcement Litigation to decide whether to approve certain requests.¹ As a result of Agency Headquarters restructuring, I am modifying the prior delegations made to the Associate General Counsel for Enforcement Litigation, to now be made to the Associate General Counsel for the Division of Legal Counsel.

By memorandum dated May 22, 1998 (GC 98-7), the Associate General Counsel for Enforcement Litigation was granted final authority to authorize disclosures under Section 102.118 in certain circumstances involving ongoing litigation in the Special Litigation, Contempt, and Appellate Court Branches. Those branches regularly engage in litigation in courts where affidavits from, and testimony by, Board agents or attorneys, or production of agency records is necessary and/or beneficial. In other instances, it is beneficial to share information with other government agencies, U.S. Trustees in bankruptcy, trustees in

¹ See General Counsel memoranda dated February 2, 1972 (authorization for compliance officers to testify in compliance proceedings), March 21, 1974 (GC 74-17) (policy to permit inspection of regional files by agents of other federal agencies), March 20, 1992 (GC 92-2) (authorization to provide *Vaughn* indices in FOIA litigation), November 2, 1994 (GC 94-14) (delegation to Regional Directors to permit disclosure in four specified circumstances), May 22, 1998 (GC 98-7) (delegation to the Associate General Counsel for Enforcement Litigation in matters involving litigation handled in that Division), and July 13, 1998 (GC 98-9) (delegation to the Associate General Counsel for the Division of Operations-Management to determine 102.118 requests in matters not specified in prior memos).

bankruptcy, or other creditors of a debtor. Accordingly, authority to grant Section 102.118 authorization was delegated because time is frequently of the essence in meeting court-imposed deadlines, and the litigating branches tend to be in the best position to evaluate the need, in each case, for Section 102.118 authorization and to weigh the advantages and disadvantages of disclosure against the costs of litigation concomitant with nondisclosure. Such delegation further promotes internal agency efficiency. Additionally, by memorandum dated November 2, 1994 (GC Memo 94-14), the Regions were directed to contact the Special Litigation Branch when subpoenas (other than NLRB subpoenas) were served upon them, seeking documents or testimony in third-party litigation.

In July 2013, the Agency restructured Headquarters offices, including creating the Division of Legal Counsel, merging the Special Litigation and Contempt Litigation and Compliance Branches, and moving that merged branch (Contempt, Compliance, and Special Litigation Branch (CCSLB)) into the new Division. *See* 78 Fed. Reg. 44981 (July 25, 2013). As a result of this restructuring, the large majority, if not all, (non-Agency) litigation involving a need to disclose information arises out of the Contempt, Compliance, and Special Litigation Branch, within the Division of Legal Counsel. Additionally, with respect to third-party subpoenas directed to the Special Litigation Branch, that branch is now part of CCSLB, within the Division of Legal Counsel. Accordingly, the same reasons that supported delegating authority to the Associate General Counsel for Enforcement Litigation now support delegation to the Associate General Counsel for the Division of Legal Counsel instead. Additionally, as Legal Counsel also contains the Agency's FOIA Branch, that Division is better positioned to determine consistent Agency policy regarding disclosures.

There is an additional category of requests that should be directed to the Division of Legal Counsel for response. GC Memo 74-17 authorizes Regional Directors to permit the inspection of files by employees of federal agencies, and this authorization was extended to state and local agencies in GC Memo 94-14 (at 2 n.3). However, now that the Agency's files are accessible to headquarters electronically, consistency in Agency responses would be better served by having those requests answered by the Division of Legal Counsel, rather than by Regional Directors. When appropriate, such as when information from open cases has been requested, the Division of Legal Counsel should consult with the region. Providing the Division of Legal Counsel authority to respond to outside agency requests is particularly appropriate when federal or state criminal prosecutors seek access to informal Board records in aid of a *criminal investigation*. This is because if a criminal case goes to trial, the prosecution is obligated to release to the defendant much of the information collected in the course of the investigation. The Division of Legal Counsel is best suited to determine which such material should be released by the General Counsel, endeavoring to protect Agency privileges to the extent possible.

Accordingly, I hereby delegate to the Associate General Counsel for the Division of Legal Counsel final authority to grant authorization under Section 102.118 of the Board's Rules and Regulations for any member of the staff of the General Counsel, whether in headquarters or in the field, to write affidavits, to testify, or to provide other evidence in ongoing litigation, or otherwise to disclose information where the matter is being handled by or with the assistance of one of the litigating branches of the Division of Legal Counsel and where:

1. Affidavits from, and testimony by, Board agents or attorneys, or production of agency records would be necessary and/or beneficial;
2. The agency finds it beneficial to share information with other government agencies, U.S. Trustees in bankruptcy, trustees in bankruptcy, or other creditors of a debtor; or
3. The agency is responding to a third party subpoena.

Additionally, I further delegate to the Associate General Counsel for the Division of Legal Counsel the authority to produce agency records in response to requests from state or federal agencies. As stated in GC 74-17 and GC 94-14, the Agency's policy is to cooperate with such agencies, subject to certain precautions. As stated in GC 94-14, the federal or state agency officials should be reminded that our non-public file information was gathered for law enforcement purposes. In addition, "the officials should be requested to assert any available privileges and resist disclosure if a request for disclosure of the information is made. In this regard a federal agency would have the FOIA exemptions available to resist inappropriate disclosure. Many states also have statutes similar to FOIA providing access to their files while exempting disclosure of certain documents. In addition, the official should be informed that it is expected that before disclosing the information supplied from our files to any source, the [Agency] will be informed." GC 94-14 at 2 n.3.

Any questions concerning this matter should be addressed to the Associate General Counsel for the Division of Legal Counsel.

/s/

R. F.G.

OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 23-03

November 9, 2022

TO: All Regional Directors, Officers-in-Charge,
and Resident Officers

FROM: Jennifer A. Abruzzo, General Counsel

SUBJECT: Delegation to Regional Directors of Section 102.118 Authorization
Regarding Record Requests from Federal, State, and Local Worker and
Consumer Protection Agencies

This memo explains a change in procedure regarding the Agency's response to requests for records from federal, state, and local worker and consumer protection agencies, pursuant to [Section 102.118](#) of the Board's Rules and Regulations, as amended. That regulation, in relevant part, prohibits Agency employees from disclosing records without consent of the General Counsel for records in the Regions or in Headquarters and under the control of the General Counsel.

The Office of General Counsel has for decades maintained a policy of assisting other governmental agencies with information requests. Previously, such cooperation was administered through the Regions. See GC 74-17 and GC 94-14. Then, in [GC 18-01](#), the General Counsel delegated to the Associate General Counsel for the Division of Legal Counsel the authority to produce Agency records in response to requests from federal, state, and local agencies.

During my term, I have made major efforts to strengthen and enhance the sharing of information with other federal agencies. See, e.g., [GC 22-03](#); <https://www.nlrb.gov/guidance/key-reference-materials/interagency-international-collaboration/interagency-MOUs>. This increased information-sharing, in turn, necessitates further adjustments to the Agency's processes. Accordingly, I am now modifying the delegations made in GC 18-01 by returning discretion to Regional Directors to answer information requests, in most instances, from other federal, state, and local agencies that protect worker and consumer rights.

The Agency currently has in place a number of information-sharing agreements governing requests for records from various governmental agencies. However, if a request is made when there is no existing information-sharing agreement, then several options for handling the request exist, depending on its scope:

- (1) if the information request concerns multiple Regions or nationwide information, then the Office of General Counsel may negotiate an information-sharing agreement with the other agency;

- (2) if the information request is made to a single Region and concerns a large case or multiple cases:
- a. the Region may choose to negotiate an information-sharing agreement with the other agency (in consultation with the Office of General Counsel); or
 - b. the Region may choose to make a discretionary release under Section 102.118 of the Board's Rules and Regulations, without negotiating an agreement;
- (3) if the information request is made to a single Region and concerns a discrete set of records, the Region should make a discretionary release under Section 102.118.

I hope that this change to procedure will enhance our ability to coordinate with other labor and consumer protection agencies. Such coordination will advance a whole of government approach to enforcing all related laws in the most effective and efficient way, which in turn will ensure workers are fully protected while minimizing employers' compliance burdens.

/s/
J.A.A.

DELEGATION OF AUTHORITY

By virtue of the authority vested in me as the Chairman, including 29 U.S. Code § 153, *National Labor Relations Board*, 5 U.S.C. § 301, *Departmental Regulations*, and 5 U.S.C. § 302, *Delegation Authority*, I hereby delegate the authority to perform the duties of the Chairman to Andy Krafts, Chief of Staff to the Chairman.

This delegation is effective upon my signature and will remain in effect unless rescinded by me.

Lauren McFerran

Lauren McFerran
Chairman

January 27, 2021